

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

APPEARANCES:

SAPERSTON & DAY, P.C.
Special Counsel to the § 1104 Trustee
360 South Warren Street
Syracuse, New York 13202

KENNETH M. ALWEIS, ESQ.
Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court considers herein the First Application of Saperston & Day, P.C. ("S&D") For Allowance of Fees and Expenses ("First Application"), as special counsel to the Trustee in these consolidated cases. The First Application seeks payment of professional fees in the amount of \$618,892.25 and reimbursement of expenses of \$40,869.07 incurred during the period April 1997 through April 1998. The First Application was submitted to Stuart, Maue, Mitchell & James, Ltd. ("Fee Auditor") in accordance with the Court's Amended Order dated December 2, 1996, regarding fee applications subject to review by the Fee Auditor ("Amended Order"). The report of the Fee Auditor ("Auditor's Report") was filed with the Court on August 26, 1998. The First Application came on for a hearing before the Court on September 10, 1998 at which time the Court approved a provisional award of \$450,000 in fees and \$35,000 in expenses to S&D. Opposition was interposed by the United States Trustee ("UST") and the Official Committee of

Unsecured Creditors.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), (b)(1) and (b)(2)(A) and (O).

FACTS, ARGUMENTS & CONCLUSIONS

As is customary, the Auditor's Report identifies entries in S&D's time records filed in support of the First Application as falling into sixteen categories which "Appear to Violate Court Guidelines." In addition, the Auditor's Report isolates approximately eleven much more specific and limited categories or tasks which it calls to the Court's attention for further review and analysis.

S&D filed a Response to the Auditor's Report September 3, 1998 ("Response"), as well as a Supplemental Response on September 8, 1998. In its Response, S&D agreed to reduce its First Application by \$2,470 in response to the Fee Auditor's identification of certain billing discrepancies.

As to the balance of the Auditor's Report, S&D takes issue with the Auditor's observations specifically with regard to potentially Duplicative Entries, Spread Billing, Travel Time, Legal Research, Multiple Professionals, Paralegal Preparation, Personnel Who Bill 20 or Fewer Hours, Long Billing Days, Intra-Office Conferences, Conferences with Simpson, Thacher

& Bartlett Personnel and Execution of Pleadings Cover Sheet, Other Documents.

The Court considered each of the foregoing categories, examined the various Exhibits produced by the Fee Auditor in support of its observations and has determined to make no adjustment to the fees requested in those categories.

Being personally familiar with the results of the tasks undertaken by S&D in the Spring of 1998 as special counsel to the Trustee in connection with the commencement of literally thousands of adversary proceedings, the Court will accept the fees requested in the aforementioned categories, though under other circumstances the time consumed might not be allowed. In addition, the Court has examined the “Spread Billing” concern raised in the Auditor’s Report and after reviewing the time records of S&D, the Court concludes that it has appropriately allocated time to each separate task rather than allocating an entire time block to such discreet task.

The Court does, however, take issue with 107 hours or \$19,000 devoted to S&F’s conflicts checks, retention and Fee Applications. The Court concludes that while compensable, the expense to creditors should be minimal and, thus, the Court will allow a fee for these functions of no more than \$1,000.

Turning finally to S&D’s request for expense reimbursement, the Audit Report has identified \$2,224.34 of “unreceipted expenses.” S&D has indicated that they will provide documentation for all expenses in excess of \$25. As to “office overhead” identified by the Auditor’s Report, S&D has agreed to a reduction of \$2,277.30. Additionally, S&D has agreed to a reduction of \$369.01 for “Special Clerical Services,” \$805.44 for “Lunches” and \$66.02 for “Amenities.” Other than these consensual reductions, the Court finds no reason to further reduce

S&D's requested expense reimbursement.

In summary, the Court makes the following reduction to fees and expenses sought in the First Application:

<u>Total Requested Fees</u>	\$618,892.25
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Disallowances:

Potential Double Billed Entries (consensual)	2,470.00
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Saperston & Day retention, conflict checks and Fee Application	18,054.00
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Provisional Award granted on 9/10/98	450,000.00
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<u>Net Total Fee Allowed</u>	\$148,368.25
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<u>Total Requested Expenses</u>	\$ 40,869.07
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Disallowances:

Unreceipted expenses	2,224.34
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Office Overhead	2,277.30
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Special Clerical Services	369.01
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Lunches	805.44
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Amenities	66.02
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Provisional Award Expenses granted 9/10/98	\$ 35,000.00
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<u>Net Total Expenses Allowed</u>	\$ 126.96
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Based on the foregoing, it is

ORDERED that the fees and expenses requested by S&D in its First Application shall be

allowed as detailed above, and, it is further

ORDERED that payment of the remaining balance of allowed fees and expenses shall not be made from encumbered assets of the consolidated estates.

Dated at Utica, New York

this 16th day of June 1999

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge